

MINUTES OF THE SOLID WASTE MANAGEMENT BOARD MEETING

Indiana Government Center South
402 West Washington Street
Conference Center Room A -- 1:30 p.m.
Indianapolis, Indiana
March 16, 2010

The meeting was called to order by Mayor William Graham, Chairperson, at 1:30 p.m. The following members were present: Mr. Tom Barnett, Mr. Marlin Chambers, Mr. Chuck Himes, Dr. Ted Niemiec, Mr. Howard Cundiff, Ms. Pam Fisher, Mr. Tom Hohman, Mr. Brandon Seitz, Mr. Rick Dyar and Mr. Jim Murray. A quorum was present.

The following Indiana Department of Environmental Management (IDEM) staff members were present: Mr. Thomas Easterly, Commissioner; Mr. Kent Abernathy, Chief of Staff; Mr. Bruce Palin, Assistant Commissioner, Office of Land Quality; Mr. Mike Dalton, Section Chief, Rules Development Branch, Office of Legal Counsel; Mr. Steve Mojonier, Rules Development Branch, Office of Legal Counsel; Ms. Lydia Kuykendal, Rules Development Branch, Office of Legal Counsel; Ms. Lynn West, Rules Development Branch, Office of Legal Counsel; Ms. Janet Pittman, Rules Development Branch, Office of Legal Counsel; Ms. Betsy Rouse, Rules Development Branch, Office of Legal Counsel; Ms. Nancy King, Branch Chief, Rules Development Branch, Office of Legal Counsel; Ms. Ann Long, Attorney, Office of Legal Counsel; Ms. Daniela Klesmith, Permits Branch, Office of Land Quality; Mr. John Hale, Permits Branch, Office of Land Quality; Ms. Shyamala Raman, Permits Branch, Office of Land Quality; Sandra Roberts, Science Services Branch.

APPROVAL OF MINUTES

Mayor Graham asked for additions or corrections to the minutes of the Solid Waste Management Board meeting of November 17, 2009. There being none, Mayor Graham asked for a motion to approve the minutes. Dr. Niemiec so moved and Mr. Chambers seconded. The motion passed unanimously.

IDEM BRIEFING

Commissioner Easterly introduced Mr. Kent Abernathy, Chief of Staff, to the Board.

Mr. Bruce Palin briefly described his tour of an auto salvage facility that participates in IDEM's compliance program for auto salvage facilities incentive program for recognition as a "clean yard". IDEM has held several workshops and distributed workbooks. IDEM received a grant from the U.S. Environmental Protection Agency (EPA) to begin the educational outreach. The compliance program includes a self-audit program for facilities to gauge their program management. Mr. Palin said the next phase of the process will be to visit those facilities that are not participating in the program and evaluate their basic requirement and compliance. For Mr. Palin's verbatim account, please see pages 5 through 9 of the official transcript.

RULES BRIEFING

Ms. Lynn West distributed the new rulemaking project list and explained that a new rule, LSA #10-66, the Underground Storage Tank Operator Training Requirement Rule, was being added. She stated that this rulemaking is required under Federal law. Also, Ms. West said that the Mobile Home Salvaging Rule, which was in the Biomass Digester Rule, will now become a separate rule. She asked the Board for any input or suggestions for a tentative Board Meeting Training in the fall. She stated that the Board could possibly tour a Biomass facility prior to preliminary adoption of the rule.

RULEMAKING ACTION

The board undertook the following rulemaking actions:

- LSA Document #06-70 – Public hearing and board consideration of final adoption of new rules and amendments to 329 IAC 11, Solid Waste Processing Facilities.

Mayor Graham announced the public hearing to consider final adoption of LSA # 06-70, new rules and amendments at 329 IAC 11, Solid Waste Processing Facilities. He introduced Exhibit A, the proposed rule, and Exhibit A-1, IDEM's suggested changes, into the record of the hearing.

Ms. Lynn West informed the board that this rulemaking had not had major revisions since the early 1990's. The purpose of this rulemaking is to revise the rule and to clarify the language of 329 IAC 11, to uphold consistency with related statutes and other solid waste rules and to improve the organization of the rule. Ms. West noted that comments were received at the first and second public hearing by Mr. Bill Paraskevas, representing the National Solid Waste Management Association (NSWMA). She said that IDEM made changes based on those comments and responded to all the comments. Ms. West then read the 25 changes that IDEM proposed for adoption of this rule. For a verbatim account, please see pages 13 through 23 of the official transcript.

Mayor Graham then asked for questions from the Board. Mr. Chuck Himes questioned the numbering of Idem's Suggested Changes. After Board discussion, Ms. West noted that changes will be made in subdivision 11 and subdivision 12 to have them both read "except as allowed under subdivision 13".

Mayor Graham then opened the floor to commenter Mr. Bill Paraskevas with the Indiana Chapter of the National Solid Waste Management Association (NSWMA). Mr. Paraskevas distributed a handout to the Board members listing several comments regarding zoning permit applications, permit revocation and financial assurance. He stated that the association was generally in agreement with the changes being made in the rule, however, they suggested that the words "from the zoning authority" in the opening sentence of subsection be deleted to make this subsection consistent with the same subsection in the landfill rules. Regarding Permit Revocation, 329 IAC 11-11-6(b), the NSWMA felt this paragraph should be deleted, stating that the processing rules do not define "unsuitable locations." In Financial Assurance—the association suggested that IDEM prepare a guidance document on determining financial assurance. In conclusion, Mr. Paraskevas stated that the NSWMA was seeking additional guidance from IDEM. Please see pages 24 through 31 of the official transcript for a verbatim account of Mr. Paraskevas' presentation. Mr. Chuck Himes inquired about the "unsuitable location" reference noted in the written comments of NSWMA's No. 2. Permit Revocation, and asked if it could be covered by a guidance document. Mr. Paraskevas replied that it may be a legal question. Mr. Palin added clarification by reading from that section, "unless the permittee demonstrates to the Commissioner that continued use of the facility will not pose a human health to environment".

The second speaker was Mr. Guinn Doyle, representing Heritage Environmental Services. He said his company believes there are many operational transfer stations handling non-municipal solid waste that are not regulated who don't understand that they are regulated, but should be. He said there are 83 registered hazardous waste transfer stations, and 56 sites have solid waste permits. He also stated that none of the 83 hazardous waste sites have a solid waste processing permit and he would assume that some of those are managing non-municipal nonhazardous waste. He stated that "a transfer station shall not accept liquid waste." Mr. Doyle recommended rule postponement for discussion with IDEM or that the proposed change to 329 IAC 11-3-1-15 be revised to "operations of transfer stations handling only non-municipal solid waste are excluded from the regulation." Mr. Himes stated that there are several different approaches that could be taken to address this issue.

Other questions were raised by the Board and discussion followed. For a verbatim account of Mr. Doyle's presentation and discussion, please see pages 31 - 52 of the official transcript. Mayor Graham asked if there were any other questions for the staff; there were none.

Mayor Graham closed the public hearing and asked for final questions or discussion.

Mayor Graham made a motion to final adopt the rule as amended. Mr. Tom Homan moved to adopt, and it was seconded by Mr. Chambers. Motion to adopt new subdivision 11, a new subdivision 12 and change subdivision 15 to 13 in IDEM's Suggested Changes to the Proposed Rule. The rule passed unanimously with Mayor Graham abstaining.

- LSA Document #09-613 – Public hearing and board consideration of final adoption of Amendments to 329 IAC 3.1, Academic Lab Waste.

Mayor Graham announced the public hearing to consider final adoption of LSA # 09-613, amendments to 329 IAC 3.1, Academic Lab Waste. He introduced Exhibit B, the proposed rule for final adoption, into the record of the hearing.

Mr. Steve Mojonniere presented the rule to the board as described in the transcript of the meeting and recommended that the board final adopt the proposed rule changes as presented in Exhibit B. He explained that the rule incorporates by reference the EPA amendment to the hazardous waste rules that were published December 1, 2008. He stated that the amendment completes the alternative generator requirements that apply to laboratories owned by eligible academic institutions. Mr. Mojonniere stated that these provisions are optional, and that colleges, universities and other academic entities formally affiliated with a college or university have the option of managing hazardous waste according to the new final regulations or the current generator. The rule adds a new Subpart K to 40 CFR Part 262 will be available as an option for generators in Indiana after it has been adopted in our hazardous waste program.

Mayor Graham then asked the Board if there were any questions. A board discussion followed. Questions were raised by Board members inquiring about the destination of the lab waste if it is exempt from the hazardous waste. Mr. Mojonniere responded that it wasn't exempt and that their laboratory management plan (reduced handling requirements) must be followed. For a verbatim account of Mr. Mojonniere's presentation, please see pages 56 through 59 of the official transcript.

No public comments were presented during the public hearing. Mayor Graham closed the public hearing and the board deliberated on final adoption of the rule. Following board consideration, Mayor Graham asked for a motion to final adopt the rule as presented. Mr. Cundiff so moved and Mr. Chambers seconded. A roll call vote was taken and the motion passed unanimously.

NONRULE POLICY DOCUMENT

Ms. Daniela Klesmith, Engineering Technical Advisor, Office of Land Quality, presented the Nonrule Policy Document NPD Waste-0059, "Use of Waste Tires as an Alternative Fuel Source." Ms. Klesmith explained that the nonrule policy document provides guidelines on acceptable waste tire uses as an alternative fuel source according to state waste regulations. She stated that the intent of this policy is to clarify which IDEM solid and hazardous waste rules and policies are applicable if a facility is burning waste tires as an alternative fuel source instead of coal, oil, or other fossil fuel sources. The Office of Land Quality received several inquiries about the use of waste tires as an alternative fuel source and whether this would require a solid waste incinerator permit from this office under the rules of Solid Waste Processing Facilities, 329 IAC 11.

IDEM has also issued a First Notice in the Indiana Register on development of new rules concerning registration of facilities that use industrial or commercial waste, including waste tires, as an alternative fuel source. Once the new rules is completed, this nonrule policy will not be necessary.

Mayor Graham then asked for any questions. Board members asked Ms. Klesmith if someone wanted to burn tires, they would need an air permit, to which she replied in the affirmative, and, if they only burn tires, they would also be required to have an incinerator permit under the Solid Waste rules. For a verbatim account of Ms. Klesmith's presentation, please see pages 66 through 69 of the official transcript.

OPEN FORUM

Mayor Graham invited public comment on topics of interest and potential rulemakings regarding Title 329 Indiana Administrative Code. There were no public comments.

ADJOURNMENT

Mayor Graham adjourned the meeting at 2:46 p.m.

NEXT MEETING SCHEDULED

The next meeting is scheduled for Tuesday, May 18, 2010, at 1:30 p.m. at the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana.